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10/599,520	05/11/2007	Robert Poirrier	150026.00000	1235

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EXAMINER	
LIPITZ, JEFFREY BRIAN	
ART UNIT	PAPER NUMBER
3769	

MAIL DATE	DELIVERY MODE
08/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/599,520	POIRRIER ET AL.	
	Examiner	Art Unit	
	JEFFREY B. LIPITZ	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,6-10 and 13-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 6-10, and 13-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/10/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 8 is objected to because of the following informalities: The phrase "on the one hand" does not make sense. It should be eliminated altogether. Appropriate correction is required.

Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitations recited in this claim are either substantial duplicates of claim 10 or limitations that are necessitated by the limitations of claims 10. Since these limitations do not further modify an existing element, the claim does not further limit subject matter of claims 6, 9 or 10, from which it depends.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-10 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 6-10 and 13-15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Claims 6 and 9 contain this phrase.

Regarding claim 8, the phrase "on the one hand" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7, 9-10, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerdt (US 6235046).

Regarding claims 1, 2, 6 and 7, Gerdt teaches a device for implementing a phototherapy method on a set of eyes (Column 2, Lines 30-36) comprising: glasses or spectacles (170) with a plastic frame (180) and lenses (178), and at least one light source (172 or 202) mounted on or embedded in the lenses or frame (Column 8, Lines 61-67; Column 9, Lines 1-9; Figure 16). Gerdt teaches that specific wavelengths are applied to the retina, but minimal light is applied to the fovea (Column 5, Lines 56-59). Gerdt teaches that the light sources are positioned in a circular configuration around the center of the eye or at the periphery of a field of vision of the individual (Figures 4, 6 and 13). The light is delivered to each eye by an off-center diffractive optical element or ring (70 or 180; Column 5, Lines 41-55; Column 7, Lines 59-66). Examiner interprets the ring as a diffractive element because it delivers light to each of the eyes through apertures (42 or 184; Figures 6 and 14). In the embodiment of Figure 14, the light is

delivered to ring (180) and then exits the ring through apertures (184). The light must split to exit the ring. Since all of the apertures are located on one side of the ring, they will recombine between the ring and the eyes.

Regarding claims 3 and 15, Gerdt teaches angling the light into the eye so that it terminates on the retina and avoiding direct contact of the light with the fovea (Column 5, Lines 45-53). Gerdt also teaches using multiple apertures to direct light into the eye (Figures 4, 6 and 13). An image or rays of light are normally projected onto the retina by converging at a point behind the pupil (Figure 1). The greater the angle of entry of the light rays into the eye, relative to the direct line of vision (perpendicular to the center of the pupil), the closer the convergence of the light rays, relative to the pupil.

Regarding claim 9, Gerdt teaches that the light sources can be LED's (Column 6, Lines 28-67) and that each eye has its own deflection means (lenses and light ring) arranged to cooperate with the light sources of each eye (Column 9, Lines 1-8; Figure 16). Each of the lenses (178) is any of the embodiments of light rings discussed with respect to Figures 4, 6, 13, or 14.

Regarding claims 10 and 13, Gerdt teaches using different numerical apertures for the core and cladding. These properties of the core and cladding alter the angle of exit of the light beam into the light ring. The fibers are embedded in the frame of the glasses with the light source (Column 8, Lines 66-67; Column 9, Lines 1-8). Examiner interprets the frame of the glasses to be at the periphery of the field of vision. Claim 13 recites limitations that are necessitated by the limitations set forth in claim 6 ("emitting light rays are directed into the eyes by deflection means") and claim 10 ("a condenser is

arragned so as to direct light rays emitted by each of the light sources onto deflection means").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdt.

Regarding claim 14, Gerdt does NOT teach the F number of the diffractive lenses. However, Applicant provides no rationale for using an F number of around 0.7. Therefore, the approximate F number of the diffractive lens does not appear to be critical to the practice of the invention. In addition, the optimal F number will depend on the position of the target spot to be illuminated relative to the light source. Applicant discloses that the light rays should be directed to a point slightly behind the pupil of the eye (Pages 4 and 10). Gerdt teaches angling the light onto the retina, which is behind the pupil of the eye. Therefore, Gerdt must have chosen an F number of the diffractive lens that would enable light to be directed in a similar manner.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdt as applied to claim 6 above, and further in view of Goldman (US 5923398).

Regarding claim 8, Gerdt does NOT teach using a spectacle attachment to provide the light sources or the deflection means as claimed. However, attention is directed to Goldman who also teaches a eyewear for providing retinal stimulation

(Column 2, Lines 1-14). Goldman teaches using clip-on elements or spectacle attachments to be attached to the wearer's glasses (Column 2, Lines 34-39; Column 4, Lines 31-36). The remaining limitations of this claim are substantially similar to those of claim 7, rejected supra. It would have been obvious to use spectacle attachments with eyeglasses, because some patients that require the phototherapy treatment offered by Gerdt may need to use corrective lens to read or watch television. It is an object of Gerdt to provide the user with a device that will allow a user to read or watch television while undergoing treatment (Column 5, Lines 50-55).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY B. LIPITZ whose telephone number is (571)270-5612. The examiner can normally be reached on Monday to Thursday, 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry M. Johnson III can be reached on (571)272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEFFREY B LIPITZ/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769